

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

MICHAEL KUTZBACK, Individually on behalf
of himself and others similarly situated,

Plaintiff,

v.

Case No. 2:13-cv-02767

LMS INTELLIBOUND, LLC, a Foreign Limited
Liability Company and CAPSTONE LOGISTICS,
LLC, a Domestic Limited Liability Company,

Defendants.

DEFENDANT’S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant LMS Intellibound, LLC¹ (“Defendant”), by and through counsel, hereby moves the Court to dismiss the Complaint of Plaintiff Michael Kutzback for failure to state a claim upon which relief can be granted. Plaintiff’s Complaint alleges, on behalf of himself and others similarly situated, a single cause of action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”). However, as demonstrated more fully in the accompanying Memorandum of Law in Support, Plaintiff’s Complaint fails to assert facts sufficient to support his FLSA claim. Defendant therefore respectfully requests that the Court dismiss Plaintiff’s Complaint in its entirety.

Respectfully submitted, this 1st day of November, 2013.

¹ Plaintiff has not served Defendant Capstone Logistics, LLC with a Summons and Complaint in this matter. However, to the extent that a responsive pleading is required, Defendant Capstone Logistics, LLC adopts the Motion to Dismiss as filed by Defendant LMS Intellibound, LLC.

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2013, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which a sent copy of the same to all counsel of record.

/s/Craig A. Cowart
Craig A. Cowart